

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 88

THE UNITED STATES OF AMERICA, APPELLANT

vs.

JACOB HARK AND HYMAN YAFFEE, CO-PARTNERS
DOING BUSINESS AS LIBERTY BEEF COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

FILED JUNE 4, 1943

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1 In District Court of the United States, District of Massachusetts

No. 16021, Criminal Docket

THE UNITED STATES OF AMERICA, BY INDICTMENT

v.

JACOB HARK AND HYMAN YAFFEE

Indictment

(Returned into Court by Grand Jury and filed December 21, 1942)

At a District Court of the United States of America, for the District of Massachusetts, begun and holden at Boston, within and for said District, on the second Tuesday of September in the year of our Lord one thousand nine hundred and forty-two.

The Jurors for the United States of America, within and for the District of Massachusetts, upon their oath, present that—

1. Jacob Hark, of Boston, in the District of Massachusetts, and Hyman Yaffee, of Newton in the district of Massachusetts, are made the defendants herein. Said defendants at all times hereinafter referred to, were and they are copartners doing business as Liberty Beef Company, in the City of Boston, District of Massachusetts, and, at all times hereinafter referred to, the said defendants were engaged at said place of business in the sale at wholesale of beef and veal carcasses and wholesale cuts thereof.

2. On or about the nineteenth day of June in the year nineteen hundred and forty-two, the Office of Price Administration issued Maximum Price Regulation No. 169, hereinafter referred to as the Regulation, which became effective as to wholesalers on July 20, 1942. The said Regulation prescribed maximum prices for the sale of beef and veal carcasses and wholesale cuts thereof.

3. At all times hereinafter referred to, said Regulation, as amended, was effective under the provisions of Section 2 of the Act of Congress known as the Emergency Price Control Act of 1942 (Public Law No. 421, 77th Congress), approved January 30, 1942.

4. At all times hereinafter referred to, said Maximum Price Regulation No. 169 (Section 1364.51) provided that no person shall sell or deliver any beef or veal carcass or wholesale cut, and no person in the course of trade or business shall buy or receive any beef or veal carcass or wholesale cut at a price higher than the maximum price permitted by Section 1364.52; and no

person shall agree, offer, solicit, or attempt to do any of the foregoing.

5. At all times hereinafter referred to, the sale and delivery of beef and veal carcasses and wholesale cuts thereof, were matters within the jurisdiction of the Office of Price Administration.

6. At all times hereinafter referred to, the Office of Price Administration was an agency of the United States by virtue of the provisions of Section 201 of the aforesaid Emergency Price Control Act of 1942.

7. At all times hereinafter referred to, the maximum prices for the sale of beef and veal carcasses and wholesale cuts thereof were determined under Section 1364.52 of said Maximum Price Regulation No. 169, as amended.

8. The investigation of the matters charged in this indictment was begun during the term beginning with the second Tuesday of September in the year nineteen hundred and forty-two, and the said Grand Jury was authorized to sit during the term beginning with the first Tuesday of December in the year nineteen hundred and forty-two, by order of a District Court judge for the District of Massachusetts, for the purpose of finishing investigations begun but not finished during its original term.

9. On or about the 21st day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly and wilfully sell and deliver wholesale cuts of beef to Conrad De Rosa, of Boston, Massachusetts, at prices higher than the maximum prices, as determined under Section 1364.52 of said Regulation No. 169, as amended; that is to say, the said defendants did sell and deliver to the said Conrad De Rosa ten hundred and fifteen (1015) pounds of hindquarters of beef, the grade of which is to your Grand Jurors unknown, for a price of two hundred seventy-four dollars and, five cents (\$274.05).

COUNT TWO

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8, inclusive, in Count One hereof, is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twenty-second day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver wholesale cuts of beef to Oreste Frasso, of Boston, Massachusetts, at prices higher than the maximum prices as determined under Section

1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Oreste Frasso three hindquarters of beef, weighing a total of four hundred twenty (420) pounds, the grade of which is to your Grand Jurors unknown, for a price of one hundred twenty-six dollars and sixty-two cents (\$126.62).

COUNT THREE

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8, inclusive, in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twenty-second day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Felice Moscordini, of Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Felice Moscordini two hindquarters of beef, weighing a total of two hundred eighty-eight (288) pounds; the grade of which is to your Grand Jurors unknown, for a price of eighty-two dollars and eight cents (\$82.08).

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COUNT FOUR

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the first day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Joseph Cerra, of Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Joseph Cerra two hindquarters of beef, weighing a total of three hundred fifty-six (356) pounds, the grade of which is to your Grand Jurors unknown, for a price of ninety-eight dollars and two cents (\$98.02).

COUNT FIVE

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs

1 to 8, inclusive, in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

COUNT SIX

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8, inclusive, in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the eighth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Joseph Cerra, of Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Joseph Cerra two hindquarters of beef, weighing a total of three hundred fifty-one (351) pounds, the grade of which is to your Grand Jurors unknown, for a price of one hundred one dollars and seventy-nine cents (\$101.79).

COUNT SEVEN

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8, inclusive, in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twenty-ninth day of September in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Edward Iandoli, doing business as Home Savings Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Edward Iandoli four hindquarters of beef, weighing a total of six hundred fourteen (614) pounds, the grade of which is to your Grand Jurors unknown, for a price of one hundred seventy-eight dollars and six cents (\$178.06).

COUNT EIGHT

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive, in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the eighth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Edward Iandoli, doing business as Home Savings Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Edward Iandoli four hindquarters of beef, weighing a total of six hundred fifteen (615) pounds, the grade of which is to your Grand Jurors unknown, for a price of one hundred sixty-nine dollars and thirteen cents (\$169.13).

COUNT NINE

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8, inclusive, in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the thirteenth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Edward Iandoli, doing business as Home Savings Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Edward Iandoli two hindquarters of beef, weighing a total of three hundred sixty-seven (367) pounds, the grade of which is to your Grand Jurors unknown, for a price of ninety-nine dollars and nine cents (\$99.09).

COUNT TEN

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twenty-second day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Edward Iandoli, doing business as Home Savings Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did

sell and deliver to Edward Iandoli two hindquarters of beef, weighing a total of three hundred twenty-six (326) pounds, the grade of which is to your Grand Jurors unknown, for a price of ninety-nine dollars and forty-three cents (\$99.43).

COUNT ELEVEN

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twenty-seventh day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Frank Viscione, doing business as Frank's Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Frank Viscione three rump and rounds, a total weight of three hundred thirty-two (332) pounds, the grade of which is to your Grand Jurors unknown, for a price of eighty-seven dollars and ninety-eight cents (\$87.98).

COUNT TWELVE

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the second day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Stephen Pino and Orazio Pino, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Stephen Pino and Orazio Pino two rump and round and loins, a total weight of two hundred and ninety (290) pounds, the grade of which is to your Grand Jurors unknown, for a price of seventy-nine dollars and seventy-five cents (\$79.75).

COUNT THIRTEEN

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs

1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the sixteenth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Stephen Pino and Orazio Pino, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Stephen Pino and Orazio Pino, two rump and round and loins, a total weight of two hundred eighty (280) pounds, the grade of which is to your Grand Jurors unknown, for a price of seventy-five dollars and sixty cents (\$75.60).

COUNT FOURTEEN

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twenty-second day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to 8 Stephen Pino and Orazio Pino, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Stephen Pino and Orazio Pino two rump and round and loins, a total weight of three hundred twenty-two (322) pounds, the grade of which is to your Grand Jurors unknown, for a price of eighty-eight dollars and fifty-five cents (\$88.55).

COUNT FIFTEEN

At the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the fifteenth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to John Pagano, doing business as John's Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined

under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to John Pagano two hindquarters of beef, weighing a total of two hundred seventy-one (271) pounds, the grade of which is to your Grand Jurors unknown, for a price of sixty-five dollars and three cents (\$65.03).

COUNT SIXTEEN

And the Jurors aforesaid, upon their oath aforesaid further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the sixteenth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to John Pagano, doing business as John's Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to John Pagano two hindquarters of beef, weighing a total of two hundred eighty-two (282) pounds, the grade of which is to your Grand Jurors unknown, for a price of seventy dollars and fifty cents (\$70.50).

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COUNT SEVENTEEN

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twenty-second day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly and wilfully sell and deliver to John Pagano, doing business as John's Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to John Pagano two hindquarters of beef, weighing a total of two hundred eighty-three (283) pounds, the grade of which is to your Grand Jurors unknown, for a price of seventy-two dollars and eighty-one cents (\$72.81).

COUNT EIGHTEEN

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs

1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twenty-seventh day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly and wilfully sell and deliver to John Pagano, doing business as John's Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to John Pagano rump and rounds, a total weight of three hundred, four (304) pounds, the grade of which is to your Grand Jurors unknown, for a price of, eighty-two dollars and eight cents (\$82.08).

COUNT NINETEEN

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twenty-ninth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly and wilfully sell and deliver to John Pagano, doing business as John's Market, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to John Pagano two hindquarters of beef, weighing a total of two hundred ninety-four (294) pounds, the grade of which is to your Grand Jurors unknown, for a price of seventy-three dollars and fifty cents (\$73.50).

COUNT TWENTY

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the first day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Baleslawa Recko, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said de-

defendants did sell and deliver to Baleslawa Recko one hindquarters of beef, weighing three hundred and two (302) pounds, the grade of which is to your Grand Jurors unknown, for a price of seventy-eight dollars and fifty-two cents (\$78.52).

COUNT TWENTY-ONE

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8, inclusive, in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the ninth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Baleslawa Recko, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Baleslawa Recko two

hindquarters of beef, weighing a total of three hundred forty-four (344) pounds, the grade of which is to your Grand Jurors unknown, for a price of ninety-four dollars and sixty cents (\$94.60).

COUNT TWENTY-TWO

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the twentieth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Baleslawa Recko, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices, as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Baleslawa Recko two hindquarters of beef, weighing a total of four hundred fifteen (415) pounds, the grade of which is to your Grand Jurors unknown, for a price of one hundred fourteen dollars and thirteen cents (\$114.13).

COUNT TWENTY-THREE

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs

1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Baleslawa Recko, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Baleslawa Recko two hindquarters of beef, weighing a total of three hundred sixty-two (362) pounds, the grade of which is to your Grand Jurors unknown, for a price of ninety-nine dollars and fifty-five cents (\$99.55).

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COUNT TWENTY-FOUR

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the eighth day of October in the year nineteen hundred and forty-two, at Boston in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Thomas Zacco, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Thomas Zacco four hindquarters of beef, weighing a total of five hundred twenty-two (522) pounds, the grade of which is to your Grand Jurors unknown, for a price of forty-one dollars and seventy-six cents (\$41.76).

COUNT TWENTY-FIVE

And the Jurors aforesaid, upon their oath aforesaid, further present that each and every allegation contained in paragraphs 1 to 8 inclusive in Count One hereof is reaffirmed, realleged, and incorporated as if herein set forth in full.

On or about the thirteenth day of November in the year nineteen hundred and forty-two, at Boston, in the District of Massachusetts, the said Jacob Hark and Hyman Yaffee did unlawfully, knowingly, and wilfully sell and deliver to Thomas Zacco, Boston, Massachusetts, wholesale cuts of beef at prices higher than the maximum prices as determined under Section 1364.52 of the said Regulation, as amended; that is to say, the said defendants did sell and deliver to Thomas Zacco one hind quarter of beef, weighing two hundred eighty-one (281) pounds, the grade of

which is to your Grand Jurors unknown, for a price of thirty-three dollars and seventy-two cents (\$33.72).

A True Bill.

DANIEL E. WALSH,
Foreman of the Grand Jury.

JOSEPH J. GOTTLIEB,

*Assistant United States Attorney for the
District of Massachusetts.*

District of Massachusetts, December 21, 1942. Returned into the District Court by the Grand Jurors and filed. Arthur M. Brown, Deputy Clerk.

In United States District Court

Arraignment and plea

This indictment was presented by the grand jury at the December Term of this Court, A. D., 1942, when, to wit, December 22, 1942, the Honorable Arthur D. Healey, District Judge, sitting, the said defendants Jacob Hark and Hyman Yaffee were set to the bar and having waived the reading of the indictment, upon being inquired of said severally that thereof they were not guilty.

In United States District Court

Motion of Defendant, Jacob Hark, to quash indictment

Filed January 4, 1943

Now comes the defendant, Jacob Hark, through his counsel, and moves to quash the above indictment upon the following grounds:

1. That the indictment and neither count thereof sets forth a criminal offense against the United States.
2. That the indictment and neither count thereof sets forth an offense against the United States with the certainty, particularity and definiteness required by the rules of criminal procedure and pleading.
3. That the allegations in the indictment and each and every count thereof are in violation of the defendant's constitutional rights under the Fifth Amendment to the Constitution of the United States in that upon either conviction or acquittal on any or all of the counts therein he would not be able to plead former jeopardy.
4. That the indictment and each and every count thereof is in violation of the Fifth Amendment to the Constitution of the

United States in that the Regulation alleged to have been violated compels the defendant in a criminal case to be a witness against himself, that is to say, that the defendant is required to fix the maximum price permitted by Section 1364.52 of Maximum Price Regulation No. 169 which forms the basis or standard upon which the indictment and each and every count thereof is predicated in which it is alleged that the defendant sold and delivered wholesale cuts of beef at prices higher than said maximum as determined under Section 1364.52 of said Regulation.

5. That the method established by the Price Administrator of fixing the maximum price at which beef and veal carcasses and wholesale cuts thereof could be sold or delivered as provided by Maximum Price Regulation No. 169 is arbitrary in that a person might be compelled to sell or deliver such beef and veal carcasses and wholesale cuts thereof at a price below the actual cost thereof and effecting a confiscation of property without due process of law.

14 6. That the method established by the Price Administrator of fixing the maximum price at which beef and veal carcasses and wholesale cuts thereof are permitted to be sold or delivered as provided by Section 1364.52 of Maximum Price Regulation No. 169 is unfair and inequitable.

7. That the Act of Congress known as the Emergency Price Control Act of 1942 (Public Law No. 421, 77th Congress) is in violation of the power of Congress to make and enact laws under Section 1 of Article 1 of the Constitution of the United States.

8. That the Act of Congress known as the Emergency Price Control Act of 1942 (Public Law No. 421, 77th Congress) goes beyond the constitutional authority of Congress in that by specific reference to enumerated subjects set out in Section 1 of said Act (Public Law No. 421, 77th Congress) it seeks to establish legislation founded upon indefinite or indeterminable standards which could not be known or predicted at the time of the enactment of said Act and not so sufficiently established as to support an indictment for a criminal offense under any of its terms or any regulation issued thereunder.

9. That the Regulations and Orders of the Office of Price Administration and the Price Administrator, upon which the indictment and each and every count thereof is predicated, are in violation of the power of Congress to make and enact laws of the United States.

10. That the Act of Congress known as the Emergency Price Control Act of 1942 is in violation of Section 1 of Article 1 of the Constitution of the United States in that it purports to authorize the Price Administrator to pass a prohibitory law, penal in nature.

11. That the Regulations and Orders upon which the indictment and each and every count thereof is predicated, are dependent upon determinations of fact which determinations are not shown as required by law.
12. That Maximum Price Regulation No. 169 issued by the Price Administrator is bases upon a statement of purported considerations representing the opinion of the Price Administrator and is not in conformity with the Act of Congress known as the Emergency Price Control Act of 1942.
13. That Maximum Price Regulation No. 169 issued by the Price Administrator is bases upon a statement of purported considerations representing the opinion of the Price Administrator and is not supported by a finding or findings of fact, which are sustained by any evidence and is insufficient to support a conviction upon an indictment setting forth the violation of said Regulation as constituting a criminal offense.
14. That the findings of fact upon which the punitive regulations are bases are not findings of fact to be determined by the Price Administrator but are required to be made by the defendant against whom a conviction is sought.
15. That the method of procedure established by the Price Administrator in finding the facts fixing the maximum price of beef or veal carcasses or wholesale cuts thereof and promulgating rules and regulations thereunder, the violation of which shall be a criminal offense, is in violation of the rights of the defendant under the Fifth Amendment to the Constitution of the United States.
16. That the Emergency Price Control Act of 1942 (Public Law No. 421, 77th Congress) in so far as it purports to confer upon the Price Administrator, appointed under Section 201 of Title II of said Act, authority to establish a maximum price or maximum prices as will in his judgment be fair and practicable and will carry out the purposes of the aforesaid Act is void, because of unconstitutional delegation of legislative power.
17. That the indictment and each and every count thereof alleges that the defendant sold and delivered wholesale cuts of beef at prices higher than the maximum price determined under Section 1364.52 of Maximum Price Regulation No. 169 and in instances where the defendant has no sales of certain grades of beef or wholesale cuts thereof during the period March 16 to March 28, 1942, he is required to use a price established by competitors; that the standard established or sought to be established by the Office of Price Administration and the Price Administrator is not certain, definite, and uniform under said Regulation and the defendant is called upon to answer an indictment which differs in standard from other persons engaged in the same busi-

ness with him and has the effect of requiring him to answer an indictment bases upon a standard which to certain sellers of wholesale cuts of beef may constitute a crime and which to competitors doing the same acts constitutes no crime.

18. That the indictment and neither count thereof sets forth sufficient facts to show that the Act of Congress known as the Emergency Price Control Act of 1942:

16. 19. That the indictment and neither count thereof sets forth sufficient facts to show a violation of a regulation purported to have been made by the Price Administrator acting under the authority vested in him under the Act of Congress known as the Emergency Price Control Act of 1942;

20. That the indictment and neither count thereof sets forth sufficient facts to show that the Act of Congress known as the Emergency Price Control Act of 1942 has been violated to the extent that the defendant is answerable to a criminal indictment.

21. That the indictment and neither count thereof sets forth sufficient facts to show that a regulation purported to have been made by the Price Administrator acting under the authority vested in him under the Act of Congress known as the Emergency Price Control Act of 1942 has been violated to the extent of making the defendant answerable to a criminal indictment.

22. That paragraphs 5, 6, and 7 of the indictment, reaffirmed, realleged, and incorporated by reference in each and every count therein, charge no criminal acts but set forth opinions and conclusions of the pleader as to what the law is and therefore adds nothing to any of the counts in the indictment so as to make each and every count set forth a criminal offence against the United States.

23. That the indictment and neither count thereof sets forth sufficient facts to show the grade of the wholesale cuts of beef which the defendant is alleged to have sold and delivered thereby not enabling the defendant to figure out the maximum price of each respective sale and delivery as determined under Section 1364.52 of Maximum Price Regulation No. 169 and not permitting the defendant to apprise himself of whether the prices of the alleged sales and deliveries were in fact higher than the maximum prices permitted.

23. That no price unit is set forth in the indictment or any count thereof so that the defendant is unable to ascertain what the maximum price for each alleged sale and delivery in the various counts of the indictment should be for the respective grades of wholesale cuts of beef and leaves to the government to prosecute on matters not specified in the indictment or any count thereof.

25. That the indictment and each and every count thereof purportedly alleges that there was a violation of Maximum Price Regulation No. 169 (Section 1364.51) in that the defendant did unlawfully, knowingly, and willingly sell and deliver 17. whosesale cuts of beef . . . at prices higher than the maximum prices as defined under Section 1364.52 of said Maximum Price Regulation No. 169, as amended; that at the time the Indictment was returned said Section 1364.51 and 1364.52 were not in force and effect the same having been revoked or repealed by the Price Administrator on or about December 11, 1942 which was prior to the date of the return of the indictment herein by the Grand Jury and therefore the indictment sets forth no crime against the United States as of the date of the indictment.

JACOB HARK

(By his attorneys),

LEONARD PORETSKY

In United States District Court

Motion to quash

Filed January 4, 1943

The defendant, Jacob Hark, moves that the indictment and the twenty-five counts thereof be quashed for the following reasons:

1. The allegations of fact necessary to constitute a crime are insufficient, uncertain and are not set forth with precision and certainty.
2. The allegations in each and every count in the indictment failed to state that the alleged sales were wholesale.
3. All of the twenty-five counts in the indictment are duplicates, in that each count charges the commission of more than one offense.
4. There is no allegation, in any of the twenty-five counts in the indictment, that Regulation 169 was approved as required by law.
5. There is no allegation in any of the twenty-five counts in the indictment that a warning was given, as required by law, before any criminal action was taken.
6. The said act, in so far as it creates offenses and imposes penalties, is in violation of the Constitution of the United States and an infringement of the rights of the defendant.

(By his attorney),

(Signed) WILLIAM G. MAGUIRE

William C. Maguire

In United States District Court

Motion of defendant, Hyman Yaffee, to quash indictment

Filed January 4, 1943

Now comes the defendant, Hyman Yaffee, through his counsel, and moves to quash the above indictment upon the following grounds:

1. That the indictment and neither count thereof sets forth a criminal offense against the United States.
2. That the indictment and neither count thereof sets forth an offense against the United States with the certainty, particularity and definiteness required by the rules of criminal procedure and pleading.
3. That the allegations in the indictment and each and every count thereof are in violation of the defendant's constitutional rights under the Fifth Amendment to the Constitution of the United States in that upon either conviction or acquittal on any or all of the counts therein he would not be able to plead former jeopardy.
4. That the indictment and each and every count thereof is in violation of the Fifth Amendment to the Constitution of the United States in that the Regulation alleged to have been violated compels the defendant in a criminal case to be a witness against himself, that is to say, that the defendant is required to fix the maximum price permitted by Section 1364.52 of Maximum Price Regulation No. 169 which forms the basis or standard upon which the indictment and each and every count thereof is predicated in which it is alleged that the defendant sold and delivered wholesale cuts of beef at prices higher than said maximum as determined under Section 1364.52 of said Regulation.
5. That the method established by the Price Administrator of fixing the maximum price at which beef and veal carcasses and wholesale cuts thereof could be sold or delivered as provided by Maximum Price Regulation No. 169 is arbitrary in that a person might be compelled to sell or deliver such beef and veal carcasses and wholesale cuts thereof at a price below the actual cost thereof and effecting a confiscation of property without due process of law.
6. That the method established by the Price Administrator of fixing the maximum price at which beef and veal carcasses and wholesale cuts thereof are permitted to be sold or delivered as provided by Section 1364.52 of Maximum Price Regulation No. 169 is unfair and inequitable.

7. That the Act of Congress known as the Emergency Price Control Act of 1942 (Public Law No. 421, 77th Congress) is in violation of the power of Congress to make and enact laws under Section 1 of Article I of the Constitution of the United States.

8. That the Act of Congress known as the Emergency Price Control Act of 1942 (Public Law No. 421, 77th Congress) goes beyond the constitutional authority of Congress in that by specific reference to enumerated subjects set out in Section 1 of said Act (Public Law No. 421, 77th Congress) it seeks to establish legislation founded upon indefinite or indeterminable standards which could not be known or predicted at the time of the enactment of said Act and not so sufficiently established as to support an indictment for a criminal offense under any of its terms or any regulation issued thereunder.

9. That the Regulations and Orders of the Office of Price Administration and the Price Administrator, upon which the indictment and each and every count thereof is predicated, are in violation of the power of Congress to make and enact laws of the United States under Section 1 of Article I of the Constitution of the United States.

10. That the Act of Congress known as the Emergency Price Control Act of 1942 is in violation of Section 1 of Article I of the Constitution of the United States in that it purports to authorize the Price Administrator to pass a prohibitory law, penal in nature.

11. That the Regulations and Orders upon which the indictment and each and every count thereof is predicated are dependent upon determinations of fact, which determinations are not shown as required by law.

12. That Maximum Price Regulation No. 169 issued by the Price Administrator is based upon a statement of purported considerations representing the opinion of the Price Administrator and is not in conformity with the Act of Congress known as the Emergency Price Control Act of 1942.

13. That Maximum Price Regulation No. 169 issued by the Price Administrator is based upon a statement of purported considerations representing the opinion of the Price Administrator and is not supported by a finding or findings of fact which are sustained by any evidence and is insufficient to support a conviction upon an indictment setting forth the violation of said Regulation as constituting a criminal offense.

14. That the findings of fact upon which the punitive regulations are based are not findings of fact to be determined by the Price Administrator but are required to be made by the defendant against whom a conviction is sought.

15. That the method of procedure established by the Price Administrator in finding the facts fixing the maximum price of beef or veal carcasses or wholesale cuts thereof and promulgating rules and regulations thereunder, the violation of which shall be a criminal offense, is in violation of the rights of the defendant under the Fifth Amendment to the Constitution of the United States.

16. The Emergency Price Control Act of 1942. (Public Law No. 421, 77th Congress) in so far as it purports to confer upon the Price Administrator, appointed under Section 201 of Title II of said Act, authority to establish a maximum price or maximum prices as will in his judgment be fair and practicable and will carry out the purposes of the aforesaid Act is void because of unconstitutional delegation of legislative power.

17. That the indictment and each and every count thereof alleges that the defendant sold and delivered wholesale cuts of beef at prices higher than the maximum price determined under Section 1364.52 of Maximum Price Regulation No. 169 and in instances where the defendant has no sales of certain grades of beef or wholesale cuts thereof during the period March 16 to

March 28, 1942 he is required to use a price established by competitors; that the standard established or sought to be established by the Office of Price Administration and the Price Administrator is not certain, definite and uniform under said Regulation and the defendant is called upon to answer an indictment which differs in standard from other persons engaged in the same business with him and has the effect of requiring him to answer an indictment based upon a standard which to certain sellers of wholesale cuts of beef may constitute a crime and which to competitors doing the same acts constitutes no crime.

18. That the indictment and neither count thereof sets forth sufficient facts to show a violation of the Act of Congress known as the Emergency Price Control Act of 1942.

19. That the indictment and neither count thereof sets forth sufficient facts to show a violation of a regulation purported to have been made by the Price Administrator acting under the authority vested in him under the Act of Congress known as the Emergency Price Control Act of 1942.

20. That the indictment and neither count thereof sets forth sufficient facts to show that the Act of Congress known as the Emergency Price Control Act of 1942 has been violated to the extent that the defendant is answerable to a criminal indictment.

21. That the indictment and neither count thereof sets forth sufficient facts to show that a regulation purported to have been

made by the Price Administrator acting under the authority vested in him under the Act of Congress known as the Emergency Price Control Act of 1942 has been violated to the extent of making the defendant answerable to a criminal indictment.

22. That paragraphs 5, 6, and 7 of the indictment, reaffirmed, realleged and incorporated by reference in each and every count therein, charge no criminal acts but set forth opinions and conclusions of the pleader as to what the law is and therefore adds nothing to any of the counts in the indictment so as to make each and every count set forth a criminal offense against the United States.

22. 23. That the indictment and neither count thereof sets forth sufficient facts to show the grade of the wholesale cuts of beef which the defendant is alleged to have sold and delivered thereby not enabling the defendant to figure out the maximum price of each respective sale and delivery as determined under Section 1364.52 of Maximum Price Regulation No. 169 and not permitting the defendant to apprise himself of whether the prices of the alleged sales and deliveries were in fact higher than the maximum prices permitted.

24. That no price unit is set forth in the indictment or any count thereof so that the defendant is unable to ascertain what the maximum price of each alleged sale and delivery in the various counts of the indictment should be for the respective grades of wholesale cuts of beef and leaves to the government to prosecute on matters not specified in the indictment or any count thereof.

25. That the indictment and each and every count thereof purportedly alleges that there was a violation of Maximum Price Regulation No. 169 (Section 1364.51) in that the defendant did unlawfully, knowingly, and willfully sell and deliver wholesale cuts of beef . . . at prices higher than the maximum prices, as defined under Section 1364.52 of said Maximum Price Regulation No. 169, as amended; that at the time the indictment was returned said Sections 1364.51 and 1364.52 were not in force and effect the same having been revoked or repealed by the Price Administrator on or about December 11, 1942, said revocation or repeal becoming effective on December 16, 1942, which was prior to the date of the return of the indictment herein by the Grand Jury and therefore the indictment sets forth no crime against the United States as of the date of the indictment.

HYMAN YAFFEE,

(By his attorneys),

(Signed) LEONARD POREFSKY,

(Signed) JOHN H. BACKUS.

In United States District Court

Plea in abatement of the Defendant Jacob Hark

Filed January 4, 1943

Now comes the defendant Jacob Hark, through his counsel, and pleads in objection to the indictment and each and every count thereof as follows:

1. That he is informed and believes that evidence was obtained in violation of his rights under the Fourth Amendment to the Constitution of the United States in that an agent or agents of the Office of Price Administration acting without a search warrant entered the premises of the defendant and searched his books, records, and papers unlawfully and obtained evidence which was later presented to the Grand Jury upon which this indictment was returned.

2. That if the Office of Price Administration or any agent or agents thereof had the lawful right to search, examine, or seize the books, records, and papers of the defendant in violation of the Fourth Amendment to the Constitution of the United States, the defendant under the provisions of the Act of Congress known as the Emergency Price Control Act of 1942 (Pub. Law No. 421, 77th Congress), Section 202, paragraph b, was granted immunity from prosecution.

3. That the indictment and each and every count thereof is in violation of the Fifth Amendment to the Constitution of the United States in that the Regulation alleged to have been violated compels the defendant in a criminal case to be a witness against himself, that is to say, that the defendant is required to fix the maximum price permitted by Section 1364.52 of Maximum Price Regulation No. 169 which forms the basis or standard upon which the indictment and each and every count thereof is predicated in which it is alleged that the defendant sold and delivered wholesale cuts of beef at prices higher than said maximum as determined under said Section 1364.52.

24 4. That the method established by the Price Administrator of fixing the maximum price at which beef and veal carcasses and wholesale cuts thereof could be sold and delivered as provided by Maximum Price Regulation No. 169 is arbitrary in that a person might be compelled to sell or deliver such beef and veal carcasses and wholesale cuts thereof at a price or prices below the actual cost thereof and effecting a confiscation of property without due process of law.

5. That the method established by the Price Administrator of fixing the maximum price at which beef and veal carcasses and

wholesale cuts thereof are permitted to be sold or delivered as provided by Section 1364.52 of Maximum Price Regulation No. 169 is unfair and inequitable.

6. That the findings of fact upon which the punitive regulations are based are not findings of fact to be determined by the Price Administrator, but are required to be made by the defendant against whom a conviction is sought.

7. That the indictment and each and every count thereof alleges that the defendant sold and delivered wholesale cuts of beef at prices higher than the maximum price determined under Section 1364.52 of Maximum Price Regulation No. 169 and in instances where the defendant has no sales of certain grades of beef and veal carcasses and wholesale cuts thereof during the period March 16 to March 28, 1942 he is required to use prices established by competitors; that the standard established or sought to be established by the Office of Price Administration and the Price Administrator is not *certain*, definite and uniform under said Regulation and the defendant is called upon to answer an indictment which differs in standard from other persons engaged in the same business with him and has the effect of requiring him to answer an indictment based upon a standard which to certain sellers of beef and veal carcasses and wholesale cuts thereof may constitute a crime and which to competitors doing the same act constitutes no crime.

25. Wherefore, the defendant prays that this indictment and each and every count thereof be abated and held null and void and the defendant be held not to answer further thereunder.

JACOB HARK

(By his attorney).

(Signed) LEONARD PORETSKY.

In United States District Court

Plea in abatement

Filed January 4, 1943

The defendant, Jacob Hark, says that each of the twenty-five counts of the indictment fail to describe him properly and with sufficient particularity and certainty.

Wherefore, the said Jacob Hark prays judgment of the said indictment that the same may be quashed and dismissed, and further that he may be discharged thereof.

(By his attorney).

(Signed) WILLIAM C. MAGUIRE.

William C. Maguire.

In United States District Court

Plea in abatement of the Defendant Hyman Yaffee

Filed January 4, 1943

Now comes the defendant Hyman Yaffee, through his counsel, and pleads in objection to the indictment and each and every count thereof as follows:

1. That he is informed and believes that evidence was obtained in violation of his rights under the Fourth Amendment to the Constitution of the United States in that an agent or agents of the Office of Price Administration acting without a search warrant entered the premises of the defendant and searched his books, records and papers unlawfully and obtained evidence which was later presented to the Grand Jury upon which this indictment was returned.

2. That if the Office of Price Administration or any agent or agents thereof had the lawful right to search, examine, or seize the books, records and papers of the defendant in violation of the Fourth Amendment to the Constitution of the United States, the defendant under the provisions of the Act of Congress known as the Emergency Price Control Act of 1942 (Pub. Law No. 421, 77th Congress) Section 202, paragraph b, was granted immunity from prosecution.

3. That the indictment and each and every count thereof is in violation of the Fifth Amendment to the Constitution of the United States in that the Regulation alleged to have been violated compels the defendant in a criminal case to be a witness against himself, that is to say, that the defendant is required to fix the maximum price permitted by Section 1364.52 of Maximum Price Regulation No. 169 which forms the basis or standard upon which the indictment and each and every count thereof is predicated in which it is alleged that the defendant sold and delivered wholesale cuts of beef at prices higher than said maximum as determined under said Section 1364.52.

4. That the method established by the Price Administrator of fixing the maximum price at which beef and veal carcasses and wholesale cuts thereof could be sold and delivered as provided by Maximum Price Regulation No. 169 is arbitrary in that a person might be compelled to sell or deliver such beef and veal carcasses and wholesale cuts thereof at a price below the actual cost thereof and effecting a confiscation of property without due process of law.

5. That the method established by the Price Administrator of fixing the maximum price at which beef and veal carcasses and

wholesale cuts thereof are permitted to be sold or delivered as provided by Section 1364.52 of Maximum Price Regulation No. 169 is unfair and inequitable.

6. That the findings of fact upon which the punitive regulations are based are not findings of fact to be determined by the Price Administrator, but are required to be made by the defendant against whom a conviction is sought.

27. 7. That the indictment and each and every count thereof alleges that the defendant sold and delivered wholesale cuts of beef at prices higher than the maximum price determined under Section 1364.52 of Maximum Price Regulation No. 169 and in instances where the defendant has no sales of certain grades of beef and veal carcasses and wholesale cuts thereof during the period March 16 to March 28, 1942, he is required to use prices established by competitors; that the standard established or sought to be established by the Office of Price Administration and the Price Administrator is not certain, definite, and uniform under said Regulation and the defendant is called upon to answer an indictment which differs in standard from other persons engaged in the same business with him and has the effect of requiring him to answer an indictment based upon a standard which to certain sellers of beef and veal carcasses and wholesale cuts thereof may constitute a crime and which to competitors doing the same acts constitutes no crime.

Wherefore, the defendant prays that this indictment and each and every count thereof be abated and held null and void and the defendant be held not to answer further thereunder.

HYMAN YAEFFEE
(By his attorneys).

(Signed) JOHN H. BACKUS.

(Signed) LEONARD PORITSKY.

In United States District Court

Demurrer

Filed January 4, 1943

The defendant, Jacob Hark, demurs to the indictment and to the twenty-five counts thereof, namely one to twenty-five inclusive, upon the following grounds:

1. The allegations of fact necessary to constitute a crime are insufficient, uncertain, and are not set forth with precision and certainty.

2. The allegations in each and every count in the indictment failed to state that the alleged sales were wholesale.

28 3. All of the twenty-five counts in the indictment are
duplicious, in that each count charges the commission of
more than one offense.

4. There is no allegation, in any of the twenty-five counts in
the indictment, that Regulation 169 was approved as required
by law.

5. There is no allegation in any of the twenty-five counts in
the indictment that a warning was given, as required by law,
before any criminal action was taken.

6. The said act, in so far as it creates offenses and imposes
penalties, is in violation of the Constitution of the United States
and an infringement of the rights of the defendant.

(By his Attorney),

(Signed) WILLIAM C. MAGUIRE,

William C. Maguire.

At the same term on the sixteenth day of January 1943, said
cause came on for hearing on the foregoing motions to quash,
pleas in abatement, and demurrer, the Honorable George
C. Sweeney, District Judge, sitting, and was taken under
advisement.

In United States District Court

Opinion

March 5, 1943

SWEENEY, J.: To this indictment, the defendants have filed
a demurrer, motions to quash, and pleas in abatement. In these
pleadings they attack the constitutionality of the Emergency
Price Control Act of 1942 as being both an improper use of the
war power by Congress, and an improper delegation by Congress
of its legislative function to an administrative agency. They
also insist that the defendants' rights under the Fourth
29 and Fifth Amendments to the Constitution have been in-
vaded, and further allege that the Government is without
authority to prosecute this indictment, because Maximum Price
Regulation No. 169, Sections 4364.51 and 4364.52 were revoked
prior to the return of this indictment. It is this last contention
that gives the court the most concern.

The constitutionality of this Act, as it relates to the ceiling
on rents, has been sustained by a three-judge court in *Henderson*
v. *Kimmel*, 47 F. Supp. 635, as a legitimate exercise of the war
power of Congress which is broad and "well-nigh limitless"
(*United States v. MacIntosh*, 283 U. S. 605, 624). All the rea-

sioning of that decision and the many others sustaining the war power of Congress apply with equal force to the price control features of the Act in question. See Rubinstein, Inc. v. Charline's Cut-Rate, Inc., 28 Atl. 2d 113. In the exercise of its very broad power to adopt measures which it deems essential to the war success Congress has intervened in many diverse fields. The Supreme Court has upheld such interferences with property as the taking over and operation of railroads. (Northern Pacific Railway Co. v. North Dakota Ex Rel. Langer, 250 U. S. 135) and the taking over and operation of telephone and telegraph lines (Dakota Central Telephone Co. v. South Dakota Ex Rel. Payne, 250 U. S. 163) and has approved the invasion of the freedom of the individual by compulsory military service both at home and abroad. (Arver, et al., v. United States, 245 U. S. 366.) The power to enact the Emergency Price Control Act of 1942 cannot be seriously questioned in the light of these decisions. Indeed, it would be a strange situation to grant that Congress has the power to take men from their homes and to send them to war, and to deny that Congress has the right to prevent profiteering by those supplying food to their dependents. Nor is the exercise of this broad power weakened constitutionally by the delegation of its power under proper standards to those charged with the administration of the Act. Congress has set forth the objectives in Section 1 (a), (50 App. U. S. C.

A. § 901 (a)). To attain these objectives maximum price regulations were authorized to be promulgated, the procedure for which is set out in Section 2 (a), (50 App. U. S. C. A. § 902 (a)). There is no loose and general delegation of authority here as in Panama Refining Co. v. Ryan, 293 U. S. 388, and Schechter Corp. v. United States, 295 U. S. 495. The delegation here is specific and limited by the very terms of the Act.

Congress in the exercise of its legislative function has determined the legislative policy and its formulation as a rule of conduct, by specifying the basic conclusions of fact upon ascertaining of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective. Opp Cotton Mills v. Administrator, 312 U. S. 126, 145 (dealing with the Fair Labor Standards Act); see, also, Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381 (dealing with the Bituminous Coal Act of 1937), and United States v. Rock Royal Co-op., 307 U. S. 533 (dealing with the Agricultural Marketing Agreement Act of 1937). I therefore conclude that the delegation was not improper, and it follows that the Act

is not unconstitutional, either by reason of a want of power in Congress to enact the statute, or by reason of an improper delegation of authority to the administrative officer charged with enforcement of the Act.

The question whether the prosecution of this indictment can be maintained is a very bothersome one. Maximum Price Regulation No. 169 was promulgated effective July 20, 1942. On December 10, 1942, Revised Maximum Price Regulation No. 169 was issued to be effective December 16, 1942. While this purported to be an amendment to the original regulation, it provided that "Sections 1364.51 through 1364.67 are revoked." All counts of the indictment are based on Section 1364.52. The indictment was returned to the District Court on December 21, 1942.

The common law rule was that on the repeal of an act without any reservation of its penalties, all criminal proceedings taken under it fell. *United States v. Reisinger*, 128 F. 398. See, also, *United States v. Borke*, 5 F. Supp. 429; *United States v. Gibson*, 5 F. Supp. 153; *United States v. Chambers*, 31 291 U. S. 217; *Hutchens v. United States*, 68 F. 2d 1006; *Cornerz v. United States*, 69 F. 2d 1002; *Cossiboin v. United States*, 69 F. 2d 1002; *Goldberg v. United States*, 69 F. 2d 1005; *Martino v. United States*, 69 F. 2d 1010; *Miller v. United States*, 69 F. 2d 1011; *Landen v. United States*, 299 F. 75; *Vincenti v. United States*, 272 F. 114. The basis of this rule was a presumption that the repeal was intended as a legislative pardon for past acts. 22 C. J. S. § 27, b, (4). To avoid the application of this rule, Congress passed L. U. S. C. A. § 29, which reads as follows:

"The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

The effect of this statute is to prescribe a rule of construction different from the common law rule that is binding upon the courts in all cases covered by it, but it refers only to "repeal of any statute," and does not refer to regulations or orders thereunder. Since this prescription is in derogation of the common law rights of persons accused of crime it is to be strictly construed and is limited to the repeal of statutes. The Emergency Price Control Act of 1942 is not self-operative, and the type of crime which is charged in this indictment could not come into existence until regulations had been promulgated by the admini-

istrator under legislative authority delegated to him by Congress. In other words, so far as the price control features of the Act are concerned, the statute needed implementing regulations before a crime could be committed. The findings of fact incidental to, and the promulgation of, implementing regulations are steps in the legislative function. See *Opp. Cotton Mills v. Administrator*, *supra*. Congress has not seen fit to include regulations in the wording of its general savings clause (1 U. S. C. A. § 29), and neither has the Congress or the administrator effected any other saving clause that would be applicable to Maximum Price Regulation No. 169. It would seem that Congress has empowered the administrator to insert a saving clause in any amended regulation for in Section 2 (g) (50 App. U. S. C. A. § 902 (g)), it is provided that:

"Regulations, orders, and requirements under this Act may contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof."

And if not contained in this section I think that the authority might be implied generally, but if there is no power in the administrator to add a saving clause in his regulations, then the power rests complete in Congress.

In Section 1. (b) of the Emergency Price Control Act of 1942 (50 App. U. S. C. A. § 901 (b)) Congress has particularly provided a saving clause that will permit prosecutions after the Act has been terminated either "on June 30, 1944, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier," but, again, this saving clause applies to the termination or repeal of the Act in any of the three manners specified. It has no application to the revocation of sections of a regulation.

Inasmuch as this is a criminal matter in which all doubts should be resolved in favor of the accused, and, since I doubt very much that a prosecution can be maintained under this indictment, I think that the question of the Government's right to proceed should be finally determined before entering into a possibly long and expensive trial on the merits. The United States has a right of appeal under 18 U. S. C. A. § 682. I therefore rule that these defendants cannot be held to answer to this indictment, because of the revocation of Section 1364.52 of Maximum Price Regulation No. 169, upon which the counts of the indictment are based.

ment are based, prior to the return of the indictment by the grand jury.

The motion to quash is granted.

In United States District Court

Order quashing indictment

March 31, 1943

SWEENEY, J.: This cause came on to be heard upon the defendant's motion to quash the indictment alleging that Maximum Price Regulation No. 169 has been revoked by the Price Administrator, effective December 16, 1942, before the indictment was returned. This allegation was not denied by the Government. After hearing arguments of counsel for the defendant and of the United States Attorney, it is

Ordered that the indictment be and it hereby is quashed on the ground that the Regulation alleged to have been violated was revoked prior to the return of the indictment.

By the Court:

ARTHUR M. BROWN,
Deputy Clerk.

March 31, 1943.

GEORGE C. SWEENEY,

U. S. D. J.

23

In United States District Court

Petition for appeal

The United States of America, plaintiff in the above-entitled case, considering itself aggrieved by the order of this Court entered on the 31st day of March 1943, quashing the indictment in this cause does hereby pray an appeal from said order to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said order was

based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

(Signed) **EDMUND J. BRANDON,**
Edmund J. Brandon,
United States Attorney.

(Signed) **ROBERT L. WRIGHT.**
Robert L. Wright,
Special Assistant to the Attorney General.

Allowed:

GEORGE C. SWEENEY,
This 30th day of April 1943.

In United States District Court

Order allowing appeal

In the above-entitled cause, the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the order of this Court entered on the 31st day of March 1943, quashing the indictment in this cause, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided.

It is therefore ordered and adjudged
That the appeal be and the same is hereby allowed as prayed for.

(Signed) **GEORGE C. SWEENEY,**
George C. Sweeney,
District Judge.

This 30th day of April 1943.

In United States District Court

Assignment of errors and prayer for reversal

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for an appeal to the Supreme Court of the United States hereby assigns error to the record and proceedings and to the entry of the order quashing the indictment by the said District Court on March 31, 1943, in the above-entitled cause, and says that in the entry of the said order the said District Court committed material error to the prejudice of the said plaintiff in the following particulars:

1. The court erred in sustaining the defendants' motions to quash the indictment.

2. The court erred in entering an order quashing the indictment on the ground that the regulation alleged to have been violated was revoked prior to the return of the indictment.

3. The court erred in holding that criminal liability for
35 violation of a regulation issued pursuant to the Emergency
Price Control Act of 1942 (50 U. S. C. App. 901) was ex-
tinguished or released by revocation of the regulation prior to the
return of the indictment.

4. The court erred in holding that Section 13 of the Revised
Statutes (1 U. S. C. 29) did not prevent the extinguishing or the
releasing of criminal liability for violation of a regulation revoked
prior to the return of the indictment.

Wherefore the United States of America respectively prays that
the order of the District Court quashing the indictment may be
reversed, and for such other and fit relief as to the Court may
seem just and proper.

(Signed) EDMUND J. BRANDON,
Edmund J. Brandon,
United States Attorney.

(Signed) ROBERT L. WRIGHT,
Special Assistant to the Attorney General.

This 30th day of April 1943.

41 In United States District Court

Citation

To: Jacob Hark and Hyman Yaffee, co-partners doing business
as Liberty Beef Company.

You are hereby cited and admonished to be and appear at the
Supreme Court of the United States in Washington within forty
(40) days from the date hereof, pursuant to an appeal filed in the
Clerk's Office of the District Court of the United States for the
District of Massachusetts, wherein the United States of America
is appellant and you are appellees, to show cause why the judg-
ment rendered against the said appellant as mentioned in said
appeal should not be corrected.

(Signed) GEORGE C. SWEENEY,
George C. Sweeney,
United States Judge.

This 30th day of April 1943.

In United States District Court

Praecept for transcript of record

To the Clerk of the United States District Court:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers, viz.:

1. Docket and minute entries showing return of the indictment, filing of motions to quash the indictment, pleas in abatement and the demurrer to the indictment, and entry of the order and judgment sustaining motions to quash the indictment.
2. The indictment.
3. Motions to quash the indictment filed by each appellee.
4. Pleas in abatement filed by each appellee.
5. Demurrer filed by Jacob Hark.
6. Opinion of Judge Sweeney dated March 5, 1943.
7. Order and judgment quashing indictment.
8. Petition for appeal.
9. Order allowing appeal.
10. Assignment of errors.
11. Statement required by Rule 12, paragraph 2.
12. Citation.
13. Proof of service.
14. Statement as to jurisdiction.
15. This praecipe.

(Signed) EDMUND J. BRANDON,

Edmund J. Brandon,

United States Attorney,

(Signed) ROBERT L. WRIGHT,

Special Assistant to the Attorney General.

This 30th day of April 1943.

45 In United States District Court

Docket entries

1942

Dec. 21—Indictment returned.

Dec. 22—Healey, J. Defts. (2) arraigned and severally pleaded not guilty.

Dec. 22—Healey, J. Defts. (2) ordered to recognize with sufficient security, each in the sum of \$2500. Recogs. on file-qual. surely.

Dec. 22—Healey, J. Defts. (2) each given ten days to withdraw plea and file special pleas, unless case is reached for trial before that time.

1942

Dec. 31—Motion to extend time for filing pleadings and answer to indictment filed by deft. Hark.
Dec. 31—Motion to extend time for filing pleadings and answer to indictment filed by deft. Yaffee.
Dec. 31—Sweeney, J. Motions to extend time for filing pleadings and answer to indictment allowed: time extended to Jan. 4, 1943 at 4:00 P. M.

1943

Jan. 4—Pleas in abatement (2) filed by deft. Hark.
Jan. 4—Plea in abatement filed by deft. Yaffee.
Jan. 4—Motions to quash (2) filed by deft. Hark.
Jan. 4—Motion to quash filed by deft. Yaffee.
Jan. 4—Demurrer filed by deft. Hark.
Jan. 16—Sweeney, J. Hearing on pleas in abatement filed by deft. Hark, plea in abatement filed by deft. Yaffee, motions to quash filed by deft. Hark, motion to quash filed by deft. Yaffee, and demurrer filed by deft. Hark; taken under advisement; one week for briefs.
Mar. 5—Sweeney, J. Opinion—Motion to quash is granted.
Mar. 31—Sweeney, J. Order quashing indictment.
Apr. 30—Petition for appeal filed by United States.
Apr. 30—Statement as to jurisdiction filed by United States.
Apr. 30—Assignment of errors and prayer for reversal filed by United States.
Apr. 30—Sweeney, J. Order allowing appeal.
Apr. 30—Citation issued—returnable within forty days from this date.
Apr. 30—Praecept filed by United States.
May 15—Statement and motion opposing jurisdiction of appeal filed by defendants.
46 [Clerk's certificate to foregoing transcript omitted in printing.]

47 In the Supreme Court of the United States

Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof

Filed June 11, 1943

1. Now comes the appellant in the above-entitled cause and for its statement of the points upon which it intends to rely in

its appeal to this Court adopts the points contained in its assignment of errors heretofore filed herein.

2. That the entire record in this cause as filed in this Court is necessary for consideration of the points stated by appellant, and the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court.

CHARLES FAHY,
Charles Fahy,
Solicitor General.

Dated this 4th day of June 1943.

48. Service of the foregoing statement of points to be relied upon and designation of parts of the record necessary for consideration thereof and receipt of a copy thereof are hereby acknowledged this 8th day of June 1943.

WILLIAM C. MAGUIRE,
William C. Maguire,

WILLIAM H. LEWIS,
William H. Lewis,
Attorneys for Jacob Hark.

JOHN H. BACKUS and LEONARD PORETSKY,
John H. Backus and Leonard Poretsky,

Attorneys for Hyman Yaffee.

[File endorsement omitted.]

49. Supreme Court of the United States

Order postponing further consideration of question of jurisdiction

(June 21, 1943)

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits.

[Endorsement on cover:] File No. 47,569. Massachusetts, D. C. U. S. Term No. 83. The United States of America, Appellant, vs. Jacob Hark and Hyman Yaffee, Co-partners doing business as Liberty Beef Company. Filed June 4, 1943. Term No. 83 O. T. 1943.